IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.323 OF 2004

Shaikh Mohd.Salim Mohd.Hussain ...Petitioner
vs.
Asimunnisa Mohd.Salim Shaikh- minor
through her legal guardian - mohter -
Mrs.Nasimabi Mohd. Salim Shaikh ...Respondent

Mr.Dhananjay Lonkar for the Petitioner
Mr.Suresh Bhosale i/b Mr.I.M.Khairdi for Respondent No.1
Ms M.H.Mhatre,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 17,2005

P.C.:

1. Heard Advocates for the parties. The learned Advocate for the Petitioner submitted that during the pendency of the Application under Section 125 of the Code of Criminal Procedure, 1973, initially the guardian of the Respondent agreed to submit herself to D.N.A. test and accordingly an order was passed by the learned Magistrate. He pointed out that the Petitioner deposited the requisite charges. He submitted that thereafter the guardian of the Respondent refused to undergo D.N.A. test. He submitted that as the paternity was challenged by the Petitioner, the learned Magistrate ought to have drawn adverse inference and ought to have rejected the application for maintenance. He submitted that the learned Magistrate committed an error by awarding monthly maintenance of Rs.500/- to the Respondent and the said order is erroneously confirmed by the Sessions Court.

2. The learned Sessions Court has relied upon Section 112 of the Indian Evidence Act, 1872 and has accepted the case made out by the Respondent. In my view, the learned Sessions Judge rightly held that in view of the law laid down by the Supreme Court in a decision reported in A.I.R. 1993 S.C. page No.2295 (Gautam Vs. State of West Bengal) adverse inference cannot be drawn on the ground that the guardian of the Respondent did not submit herself to D.N.A. test. The maintenance amount of Rs.500/- p.m. has been awarded by the learned Magistrate which has been confirmed by the Sessions Court. No interference is called for. Petition is therefore dismissed.

3. It is made clear that the observations which are made in this order are made only for a limited purpose of deciding this Petition arising out proceedings under section 125 of the said Code. A civil suit if any pending may be decided by the concerned Court independently.

JUDGE